

Ohio New Source Review Program Review

Performed by US EPA Region 5
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I. Executive Summary

The United States Environmental Protection Agency (USEPA) is performing on-site evaluations of the New Source Review (NSR) Program for all permitting authorities as part of the national NSR Program Evaluation Project. These permit program reviews are intended to highlight the positive aspects of a state's air permitting program, and foster quality improvements for the state and federal air programs.

We conducted the Ohio NSR program review on May 23-25, 2005, concurrent with a review of Ohio's Title V program. The NSR review consisted of two parts: a discussion based on the New Source Review Program Questionnaire and a file review.

We found that the Ohio Environmental Protection Agency's (OEPA) NSR program has many strengths including a good permit tracking system, using several avenues to notify the public and encourage public participation, and the continued work to improve the efficiency of the permitting process. We found a few areas which are in need of improvement, such as the need to continue looking for ways to more quickly enter data into the RACT/BACT/LAER Clearinghouse database.

II. Introduction

In 2003, as part of its oversight role, USEPA began a four year initiative to review the implementation of the Title V and NSR permit programs by permitting authorities throughout the country. USEPA developed two questionnaires, one addressing Title V implementation and one addressing NSR, for the Regional offices to use to provide a consistent review of all of the permitting authorities. The program review questionnaires consist of two components: questions about program implementation and criteria for a file review. The purpose of the evaluation was to review the permit programs, note practices that could be helpful to other permitting authorities, document areas needing improvement, and learn how USEPA can help the permitting authority and further improve the national programs.

On May 23-25, 2005, Region 5 staff visited the OEPA offices in Columbus, Ohio. EPA's NSR program review team consisted of Richard Angelbeck and Genevieve Damico. Prior to our visit, we provided the questionnaire to OEPA and the Agency provided us with

the answers to the questionnaire. During the visit, we discussed the questionnaire in more detail and performed a file review according to the criteria in the questionnaire. The results of the questionnaire and file review are in Appendices A and B of this report.

This final report summarizes findings and conclusions of USEPA Region 5 from its review of OEPA's NSR program. The findings and conclusions in the final report are based on the answers OEPA gave to the questionnaire, the file review, and USEPA staff's knowledge of the program from experience with reviewing OEPA permits and programs. This information was compared to the statutory and regulatory requirements for federal permitting programs.

III. Description of OEPA's Program

The Division of Air Pollution Control (DAPC), within the OEPA, is responsible for issuing Permits to Install to assure that all new or modified sources of air pollution will not have a detrimental impact on human health, human welfare, or the environment and will comply with all applicable state and federal requirements. The applicable regulation is 3745-31 of the Ohio Administrative Code. This rule requires a person to obtain a Permit to Install for any potential source of air pollution unless the source is exempt from permitting. DAPC's program is decentralized, having 12 District Offices (DO) and Local Air Agencies (LAA) which are responsible for writing the NSR permits. The DOs and LAAs (DO/LAAs) report to the DAPC Central Office, which oversees and approves their work. The DO/LAAs draft the permits and then send them to the Central Office for final approval and issuance. In resolving issues related to a permit's content, USEPA's primary contact is the Central Office, which in turn consults with the appropriate DO/LAA to address the issues and revise the permit if necessary.

Prevention of Significant Deterioration (PSD): Ohio has a SIP-approved program for the permitting of major sources in attainment areas. USEPA approved Ohio's PSD program on October 10, 2001. Prior to this time, OEPA implemented the federal PSD program under 40 CFR 52.21 through a delegation of authority from USEPA pursuant to a January, 28, 1981, delegation letter.

Nonattainment NSR: Ohio also has a SIP-approved program for the permitting of major sources in nonattainment areas. USEPA approved Ohio's nonattainment NSR program on January 10, 2003.

NSR Reform: On December 31, 2002, USEPA substantially reformed the NSR program. These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. Permitting authorities have until January 2, 2006, to submit to USEPA revisions to their PSD and nonattainment NSR programs which implement the new NSR Reform provisions. Ohio submitted these revisions to USEPA for approval on September 14, 2004. This questionnaire only focuses on pre-NSR Reform regulation implementation.

IV. Findings

A. Strengths

Permit Tracking System: OEPA uses a permit tracking system, called PTIs2000^a, which provides the status of PTI applications from receipt of the application to issuance of the permit as a final action. The public can access the tracking system on the OEPA web site, and, thus, can track the status of the permit application/permit. This information includes the processing time (in days) up to the last completed processing step for all permits received after November 1, 2000. In addition to the permit-specific information, the public can also identify the permit issuance date (draft and/or final) as well as the actual date the public notice appeared in the newspaper for each draft issued action. A recent improvement of the system is that it now lets the public track the status and view recently-issued/current permits (draft and final).

Public Participation: OEPA utilizes many avenues to allow for public participation in addition to the newspaper notification required by the federal program. OEPA maintains mailing lists of interested parties from different areas of Ohio. If a controversial project is proposed in one of these areas, OEPA will send out information to those on the mailing lists. If OEPA holds a public hearing, it will collect names of interested parties at the hearing so it can generate a list for that specific project. A recent example is the public hearing for the FDS Coke plant in Toledo, Ohio, OEPA told the attendees how they can get on the mailing list for the permit, and then supplied a sign-in sheet for those interested in being on the mailing list. OEPA also maintains various lists for rule development projects, such as a list of interested parties for the NSR Reform project OEPA recently completed, or for any rule development project(s) OEPA may be working on.

^a <http://www.epa.state.oh.us/dapc/pti/pti.html>

OEPA is willing to grant comment period extension requests based on the complexity of the project, the time that interested parties have already had to review the project, the controversial nature of the project, and the timeliness needs of the permittee. An example of this is the comment period for the FDS Coke plant in Toledo, Ohio, which was extended by ten days. OEPA posts public notice letters and draft and final permits on its web site. OEPA has a large amount of public participation information on its website^b. A public hearing calendar is included on OEPA's web site^c and this helps the public track when certain public hearings/meetings are held.

Continued Work to Improve Efficiency of Permitting Process: OEPA continues to develop and implement mechanisms to make the permitting process more efficient. Recent examples of this are General Permit to Install (GPTI) and Permit by Rule (PBR). OEPA has developed model General Permits to Install for select sources. These are similar to PTI's except that all the general terms and conditions of the permit have been developed in advance. A potential applicant can review the model general permit qualifying criteria on OEPA's web site^d and then complete an application and mail a hardcopy of the application to OEPA. OEPA reviews the application to confirm that it meets the qualifications and then issues the model GPTI to the applicant. The general permit includes a cover page that identifies the facility and emission unit-specific information. OEPA expects to be able to issue model GPTI's within 45 days of receipt of a complete application. The following is a list of currently available model GPTI's: Boilers, Dry Cleaning Operations, Miscellaneous Metal Parts Painting Lines, Ready Mix Concrete Batch Plants, Unpaved Roadways and Parking Areas, Paved Roadways and Parking Areas, and Storage Piles.

Permit by Rule (PBR) is an optional permit exemption for certain types of sources. The PBR provisions contain criteria for qualifications, emission limitations, conditions for operation, and recordkeeping and reporting requirements. PBR is currently available for Auto Body Shops, Gasoline Dispensing Facilities, Boilers/heaters, Printing Facilities, and Emergency Generators. The application forms and instructions can be found on OEPA's web site^e. OEPA is also exploring additional options such as the

^b <http://www.epa.state.oh.us/pic/facts/pub.html>

^c <http://www.epa.state.oh.us/meetings.html>

^d <http://www.epa.state.oh.us/dapc/genpermit/genpermits.html>

^e <http://www.epa.state.oh.us/dapc/pbr/permitbyrule.html>

Permit-to-Install and Operate (PTIO) program and Permitting Exemption Thresholds (PET).

B. Areas for Improvement

Routine Maintenance, Repair, and Replacement (RMRR): According to OEPA's questionnaire response (question #8 on page #7 of the questionnaire) regarding the frequency factor in a RMRR evaluation, OEPA would consider the history of the specific unit, of other similar units at the same facility, and of similar units at other facilities in the same industry. When making this analysis, there should be a greater emphasis on a specific unit's history compared to the history of other units.

Entering Best Available Control (BACT) and Lowest Available Emissions Rate (LAER) Determinations in the RACT/BACT/LAER Clearinghouse (RBLC): The RBLC clearinghouse serves as an important resource in conducting a BACT or LAER analysis. OEPA reports that it gets the RBLC updated at a minimum of every two years. USEPA recognizes that OEPA now has a designated person to enter data into the RBLC which has helped OEPA improve its timeliness in making the BACT entries, and that while OEPA got caught up two years ago, a two year cycle is too long a time period before updating the RBLC. OEPA needs to continue to try to find ways to input the data into the RBLC in a timely manner, and find a way to have entries entered into the RBLC in a time period of less than two years. With the additional non-attainment areas in Ohio, and in other states as well, it is important that states have the latest information when consulting the RBLC to get the latest LAER information (as well as BACT) for sources around the country.

Timeliness of Providing PSD/Nonattainment/Netting Applications: OEPA is required to provide USEPA with a copy of the application for all draft permits for PSD, nonattainment NSR, netting, and sources with public interest according to OEPA's Fiscal Year 2005 Workplan. These applications were sometimes provided to USEPA after the 30-day review period had begun, thus not providing a full 30-day review period for USEPA. USEPA tries to review all of these permits within the public comment period, thus the timeliness of receiving these applications is important. It would also be helpful if OEPA would notify USEPA with updates of pending PTI's during the OEPA - USEPA monthly NSR conference call. Occasionally, a controversial source or other sources of concern have not been identified by OEPA during these calls. USEPA depends on OEPA to identify upcoming NSR sources and issues, so it is important that these sources and issues are identified and discussed during these calls.

Providing Response to Comments: OEPA is required to provide USEPA with its Response to Comments when it responds to comments from the public regarding PTI's for controversial sources according to OEPA's Fiscal Year 2005 Workplan. USEPA has not typically received these documents. USEPA recommends that OEPA set up a system to ensure that USEPA timely receives its responses to comments.

Canada Notification: OEPA is required by its Fiscal Year 2005 Workplan to notify USEPA when a proposed source is to be located within 100 kilometers of the U.S./Canada border. OEPA needs to do a better job of notifying USEPA of these sources. OEPA's Fiscal Year 2006 Workplan requires OEPA to send USEPA a copy of these PTI applications of PSD/Nonattainment or controversial sources.

Permit Files: During the permit file review, it was observed that some of the files did not contain the final permit, and they were not well organized. OEPA located the final permits and added them to the permit files. For some of the files, it was difficult to find things because the file contents were not in chronological order.

Identification of Changes Made in a Permit Modification: Questions H-1 and H-2 on page #29 and question B-10 on page #36 of the questionnaire both deal with relaxing synthetic minor limits and BACT, respectively. When a permit is modified, it is often difficult to determine what changes have been made to the permit. It is difficult to determine if a BACT limit is being relaxed or changed, or if a synthetic minor limit is being relaxed. The permit modification will usually have a short sentence which attempts to show the changes that were made, but it is often not enough of a description to be able to see what the actual changes are and why they were made.

C. Other Noted Aspects of the Program

Air Toxics Policy: OEPA created and implements its Air Toxics Policy to assist in the review of new sources of toxic air pollutants. This policy allows OEPA to look at possible impacts the air toxics from new construction sources may have on local communities in Ohio. The Air Toxics Policy looks at toxic air pollutants beyond both the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS) and the federal New Source Performance Standards (NSPS) by looking at any compound which has an Occupational Safety and Health Administration (OSHA) Threshold Limit Value (TLV), and has a greater than one ton per year emission rate. These compounds and emission rates are put through

a screening model to help determine the maximum acceptable ground-level air concentration for that particular compound.

V. Recommendations

Routine Maintenance, Repair and Replacement (RMRR): OEPA's responses to the frequency evaluation factors are not entirely consistent with USEPA's interpretation of the CAA. USEPA recommends that OEPA work closely with Region 5 regarding RMRR analyses to assure there is a consistent approach to conducting such determinations.

Providing Permit Applications to USEPA: USEPA recommends that OEPA set up a system to ensure that prior to the start of the public comment period, USEPA receive applications for PSD, nonattainment NSR, netting, sources with high public interest, and sources located within 100 kilometers of the U.S./Canada border. This is important so that USEPA can provide OEPA with timely and informed comments. USEPA also recommends that OEPA continue to provide monthly updates of pending PSD and major NSR permits to USEPA. These updates help identify which applications OEPA has in-house and gives USEPA a sense of which permits, and how many, may be issued in the near future. USEPA recommends that OEPA's monthly updates be up to date and accurate and that they contain discussion of all applications which may be of special concern or that may have public interest.

Entering RACT/BACT/LAER Determinations into the RBLC: The RBLC is used by permitting authorities nationwide as a means to research the latest RACT, BACT, and LAER data for PSD and nonattainment permits. The absence of the most recent BACT/LAER determinations in the RBLC may lead to higher/outdated BACT/LAER limits established at other sources. USEPA recommends that OEPA keep RBLC entries updated, and shorten the time it takes to make entries into the RBLC so that it is done on less than a 2 year cycle.

Providing Response to Comments: OEPA needs to provide USEPA with OEPA's Response to Comments, by either the public or the USEPA, made on major and netting construction permits and permits of interest. We recommend that OEPA develop a procedure to ensure that USEPA receives these documents.

Canada Notification: USEPA recommends that OEPA notify USEPA of any planned PSD/LAER sources or controversial sources that may be built within 100 kilometers of the U.S./Canada border. OEPA should work with USEPA to provide the relevant source information to the OAQPS Canada Bulletin Board.

Identification of Changes Made in a Permit Modification: It is difficult to determine what changes have been made in a permit modification. USEPA recommends that OEPA more thoroughly describe in the permit modification the changes that were made and also include a rationale of why they were made.

Permit Files: USEPA recommends that OEPA ensure that its permit files have all the necessary information in chronological order, as much as possible.

VI. OEPA Comments

When asked to provide comments, suggestions, or concerns regarding the NSR program, OEPA stated that it would be helpful to receive prompt guidance concerning decisions on NSR Reform. OEPA pointed out that it needs to make decisions regarding NSR quickly and it would be helpful to receive USEPA guidance soon in order to help with these decisions. OEPA also mentioned in its questionnaire response that it would like EPA to provide training on NSR for PM2.5 after USEPA issues the rules and guidance for PM2.5^f.

^f See question #4 on page #80 of the NSR Questionnaire